

AMENDED IN ASSEMBLY MARCH 23, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 412

Introduced by Assembly Member Carter

February 23, 2009

An act to amend Section ~~422.6~~ *11411* of the Penal Code, relating to hate crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 412, as amended, Carter. Hate crimes: nooses.

~~Existing law provides that no person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. Violation of these provisions is punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both the above imprisonment and fine, and a minimum of community service, not to exceed 400 hours, as specified.~~

~~This bill would additionally provide that no person, whether or not acting under color of law, shall maliciously either hang or refuse to remove a noose at any school, park, place of employment, or public venue. Violation of these provisions would be subject to the punishment specified above.~~

Existing law establishes various offenses for persons who display certain symbols or burn crosses on private or school property with the intent to terrorize persons, as specified.

This bill would provide that any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park, or place of employment, for the purpose of terrorizing any person who attends or works at the school, park, or place of employment, or who is otherwise associated with the school, park, or place of employment, shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both the fine and imprisonment for the first conviction or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$15,000, or by both the fine and imprisonment for any subsequent conviction.

~~By changing the definition of an existing~~ *creating a new crime*, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Hanging a noose is directly correlated with America's history
- 3 of racial hatred and murder, representing not only a threat to
- 4 African American life and safety, but causing further psychological
- 5 and emotional trauma as well, and noose hanging is still happening
- 6 now.
- 7 (b) There are 2,805 documented victims of lynch mob killings
- 8 between 1882 and 1930 in 10 southern states. The vast majority
- 9 of lynch victims were African American. Of these black victims,

1 94 percent died in the hands of white lynch mobs. The scale of
2 this carnage means that, on average, a black man, woman, or child
3 was murdered nearly once a week, every week, between 1882 and
4 1930 by a hate-driven lynch mob.

5 (c) The lynching era encompasses nearly five decades between
6 the end of Reconstruction and the beginning of the Great
7 Depression. Although lynchings and mob killings occurred before
8 1880, notably during early Reconstruction when blacks were
9 enfranchised, radical racism and mob violence peaked during the
10 1890s in a surge of terrorism that extended well into the 20th
11 century.

12 (d) In addition to the punishment of specific criminal offenders,
13 mob lynching atrocities against African Americans in the American
14 South served to maintain social control over the black population
15 through terrorism; suppress, eliminate, or neutralize black
16 competition for economic, political, and social rewards; stabilize
17 the white class structure and preserve the privileged status of the
18 white aristocracy; eradicate specific persons accused of crimes
19 against the white community; serve as a mechanism of
20 state-sanctioned terrorism designed to maintain a degree of leverage
21 over the African American population; and serve as a symbolic
22 manifestation of the unity of white supremacy.

23 (e) The documented reasons for African American lynchings
24 included, but were not limited to, acting suspiciously, gambling,
25 adultery, race hatred, race troubles, improper conduct with white
26 women, arguing with a white man, resisting a mob, inflammatory
27 language, informing, being obnoxious, spreading disease, insulting
28 a white man, insulting a white woman, suing a white man,
29 insurrection, courting white women, testifying against a white
30 man, living with a white woman, defending an alleged rapist,
31 demanding respect, miscegenation, trying to vote, disorderly
32 conduct, mistaken identity, unpopularity, eloping with a white
33 woman, unruly remarks, entering a white woman's room, using
34 obscene language, being a peeping Tom, violating quarantine,
35 voting for the wrong party, frightening white women, and
36 membership in a civil rights organization.

37 (g) Given this history, to a reasonable person, the display of a
38 noose at a school, park, place of employment, or other public venue
39 amounts to a direct and immediate threat of force that would
40 intimidate persons based on racial characteristics.

SEC. 2.— Section 422.6 of the Penal Code is amended to read:

~~422.6. (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.~~

~~(b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.~~

~~(c) No person, whether or not acting under color of law, shall maliciously either hang or refuse to remove a noose at any school, park, place of employment, or public venue.~~

~~(d) Any person convicted of violating subdivision (a), (b), or (c) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person may be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.~~

~~(e) Conduct that violates this and any other provision of law, including, but not limited to, an offense described in Article 4.5 (commencing with Section 11410) of Chapter 3 of Title 1 of Part 4, may be charged under all applicable provisions. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, and the penalty to be imposed shall be determined as set forth in Section 654.~~

1 *SEC. 2. Section 11411 of the Penal Code is amended to read:*

2 11411. (a) *Any person who hangs a noose, knowing it to be a*
3 *symbol representing a threat to life, on the property of another,*
4 *without authorization, for the purpose of terrorizing the owner or*
5 *occupant of that private property or in reckless disregard of the*
6 *risk of terrorizing the owner or occupant of that private property,*
7 *or who hangs a noose, knowing it to be a symbol representing a*
8 *threat to life, on the property of a primary school, junior high*
9 *school, high school, college campus, public park, or place of*
10 *employment, for the purpose of terrorizing any person who attends*
11 *or works at the school, park, or place of employment, or who is*
12 *otherwise associated with the school, park, or place of employment,*
13 *shall be punished by imprisonment in a county jail not to exceed*
14 *one year, or by a fine not to exceed five thousand dollars (\$5,000),*
15 *or by both the fine and imprisonment for the first conviction or by*
16 *imprisonment in a county jail not to exceed one year, or by a fine*
17 *not to exceed fifteen thousand dollars (\$15,000), or by both the*
18 *fine and imprisonment for any subsequent conviction.*

19 (b) *Any person who places or displays a sign, mark, symbol,*
20 *emblem, or other physical impression, including, but not limited*
21 *to, a Nazi swastika on the private property of another, without*
22 *authorization, for the purpose of terrorizing the owner or occupant*
23 *of that private property or in reckless disregard of the risk of*
24 *terrorizing the owner or occupant of that private property shall be*
25 *punished by imprisonment in the a county jail not to exceed one*
26 *year, by a fine not to exceed five thousand dollars (\$5,000), or by*
27 *both the fine and imprisonment for the first conviction and by*
28 *imprisonment in the a county jail not to exceed one year, by a fine*
29 *not to exceed fifteen thousand dollars (\$15,000), or by both the*
30 *fine and imprisonment for any subsequent conviction.*

31 ~~(b)~~

32 (c) *Any person who engages in a pattern of conduct for the*
33 *purpose of terrorizing the owner or occupant of private property*
34 *or in reckless disregard of terrorizing the owner or occupant of*
35 *that private property, by placing or displaying a sign, mark, symbol,*
36 *emblem, or other physical impression, including, but not limited*
37 *to, a Nazi swastika, on the private property of another on two or*
38 *more occasions, shall be punished by imprisonment in the state*
39 *prison for 16 months or 2 or 3 years, by a fine not to exceed ten*
40 *thousand dollars (\$10,000), or by both the fine and imprisonment,*

1 or by imprisonment in a county jail not to exceed one year, by a
2 fine not to exceed five thousand dollars (\$5,000), or by both the
3 fine and imprisonment. A violation of this subdivision shall not
4 constitute felonious conduct for purposes of Section 186.22.

5 ~~(e)~~

6 *(d)* Any person who burns or desecrates a cross or other religious
7 symbol, knowing it to be a religious symbol, on the private property
8 of another without authorization for the purpose of terrorizing the
9 owner or occupant of that private property or in reckless disregard
10 of the risk of terrorizing the owner or occupant of that private
11 property, or who burns, desecrates, or destroys a cross or other
12 religious symbol, knowing it to be a religious symbol, on the
13 property of a primary school, junior high school, or high school
14 for the purpose of terrorizing any person who attends or works at
15 the school or who is otherwise associated with the school, shall
16 be punished by imprisonment in the state prison for 16 months or
17 2 or 3 years, by a fine of not more than ten thousand dollars
18 (\$10,000), or by both the fine and imprisonment, or by
19 imprisonment in a county jail not to exceed one year, by a fine not
20 to exceed five thousand dollars (\$5,000), or by both the fine and
21 imprisonment for the first conviction and by imprisonment in the
22 state prison for 16 months or 2 or 3 years, by a fine of not more
23 than ten thousand dollars (\$10,000), or by both the fine and
24 imprisonment, or by imprisonment in a county jail not to exceed
25 one year, by a fine not to exceed fifteen thousand dollars (\$15,000),
26 or by both the fine and imprisonment for any subsequent
27 conviction.

28 ~~(d)~~

29 *(e)* As used in this section, “terrorize” means to cause a person
30 of ordinary emotions and sensibilities to fear for personal safety.

31 ~~(e)~~

32 *(f)* The provisions of this section are severable. If any provision
33 of this section or its application is held invalid, that invalidity shall
34 not affect other provisions or applications that can be given effect
35 without the invalid provision or application.

36 SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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